

No. 04-271

IN THE SUPREME COURT OF THE STATE OF MONTANA

2005 MT 7

STATE OF MONTANA,

Plaintiff and Respondent,

v.

BRIAN WHITE BEAR,

Defendant and Appellant.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DC 03-0080
Honorable Susan P. Watters, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Carl DeBelly, Deputy Public Defender, Billings, Montana

For Respondent:

Hon. Mike McGrath, Attorney General; Pamela P. Collins,
Assistant Attorney General, Helena, Montana

Dennis Paxinos, Yellowstone County Attorney; Laura Watson,
Deputy County Attorney, Billings, Montana

Submitted on Briefs: December 15, 2004

Decided: January 25, 2005

Filed:

Clerk

Chief Justice Karla M. Gray delivered the Opinion of the Court.

¶1 The Thirteenth Judicial District Court, Yellowstone County, entered judgment against Brian White Bear for failing to register as a violent offender. White Bear appeals. We affirm.

¶2 The issue is whether the District Court erred in denying White Bear's motion to dismiss the information charging him with failing to register as a violent offender.

BACKGROUND

¶3 In 1996, White Bear pled guilty to felony partner or family member assault (PFMA). He received a three-year deferred imposition of sentence, which was revoked in 1999 after he violated its terms. After he was resentenced, White Bear was revoked and resentenced on two more occasions. He finally discharged the full balance of his sentence on May 12, 2002.

¶4 When White Bear was released from prison in May of 2002, he was advised of the requirement that he register as a violent offender pursuant to the Sexual or Violent Offender Registration Act (SVORA), §§ 46-23-501 through -520, MCA. On January 26, 2003, White Bear was arrested and charged with failing to maintain his violent offender registration. He moved to dismiss the information, and the District Court denied the motion. White Bear pled guilty, reserving the right to appeal the denial of his motion to dismiss. He now appeals.

STANDARD OF REVIEW

¶5 The grant or denial of a motion to dismiss in a criminal case is a question of law which we review *de novo*. *State v. Goebel*, 2001 MT 73, ¶ 10, 305 Mont. 53, ¶ 10, 31 P.3d 335, ¶ 10 (citations omitted).

DISCUSSION

¶6 Did the District Court err in denying White Bear's motion to dismiss the information charging him with failing to register as a violent offender?

¶7 White Bear argues the charges against him should have been dismissed for two reasons. First, he claims he cannot be charged with failure to register because the District Court did not give him notice of the duty to register. He maintains the registration requirement violates his right to due process of law.

¶8 White Bear's argument is based on the incorrect premise that registration was a condition of his sentence for the previous PFMA offense and, as such, was part of the punishment for that offense. Violation of the SVORA registration requirements is a separate statutory offense; the registration requirements are not part of criminal sentencing on the original sexual or violent offense. *See State v. Mount*, 2003 MT 275, ¶ 68, 317 Mont. 481, ¶ 68, 78 P.3d 829, ¶ 68.

¶9 White Bear's second claim on appeal is that he has a vested interest in both the terms and the discharge of his PFMA sentence. He asserts that, because the State failed to correct the sentence by adding the SVORA registration requirement, it waived its right to require him to register as a violent offender.

¶10 White Bear did not raise this claim before the District Court. We will not consider new arguments raised for the first time on appeal. *See State v. Martinez*, 2003 MT 65, ¶ 17, 314 Mont. 434, ¶ 17, 67 P.3d 207, ¶ 17 (citations omitted). Therefore, we do not consider White Bear's second claim.

¶11 Affirmed.

/S/ KARLA M. GRAY

We concur:

/S/ JAMES C. NELSON

/S/ PATRICIA O. COTTER

/S/ JOHN WARNER

/S/ JIM RICE